

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of  
Mark A. Clay  
Huntington, West Virginia

)  
)  
)

File No.: EB-02-CF-712  
NAL/Acct. No. 200332340003  
FRN 0005-3791-77

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 21, 2005**

**Released: June 24, 2005**

By the Acting Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order* ("Order"), we deny the petition for reconsideration filed by Mark A. Clay ("Mr. Clay") Huntington, West Virginia. Mr. Clay seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Chief, Enforcement Bureau ("Bureau"), found him liable for a monetary forfeiture in the amount of \$1,000 for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").<sup>2</sup> The noted violation involves the operation of an unlicensed FM broadcast station on the frequency 98.1 MHz, at 5666 Lynn Creek Road, Huntington, West Virginia.

2. In his petition, Mr. Clay does not dispute our finding that he committed the violation referenced above. Although the *Forfeiture Order* reduced the forfeiture amount from \$10,000 to \$1,000 based upon inability to pay, Mr. Clay seeks reconsideration and further reduction on the basis of changed circumstances. Specifically, he claims that his amount of monthly income has been reduced as a result of divorce.<sup>3</sup>

3. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In examining Mr. Clay's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>7</sup>

---

<sup>1</sup> 19 FCC Rcd 10,500 (2004).

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> He also seeks reduction based on the fact that he sold and/or destroyed the equipment which he had used in his illegal operation. The fact that he ceased his illegal operation does not warrant any reduction. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099(1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

4. Although Mr. Clay states that he will provide documentation in support of his further claim of inability to pay, he has failed to do so. Accordingly, there is no basis for granting reconsideration and additional relief.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act<sup>8</sup> and Section 1.106 of the Rules,<sup>9</sup> Mark A. Clay's petition for reconsideration of the June 16, 2004 *Forfeiture Order* **IS DENIED**.

6. Payment of the forfeiture shall be made in the manner provided in Section 1.80 of the Rules within 30 days of the release of the *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>10</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

7. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Mark A. Clay, 5666 Lynn Creek Road, Huntington, West Virginia 25704.

**FEDERAL COMMUNICATIONS COMMISSION**

Kris A. Monteith  
Acting Chief, Enforcement Bureau

---

<sup>8</sup> 47 U.S.C. § 405.

<sup>9</sup> 47 C.F.R. § 1.106.

<sup>10</sup> See 47 U.S.C. § 504(a).